



## Clarification of Procedures for Parties Seeking the Voluntary Party Liability Exemption (VPLE) for Petroleum Contaminated Sites

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The Department of Natural Resources (DNR) and the Department of Commerce (Commerce) have prepared this fact sheet to assist people who are seeking a Voluntary Party Liability Exemption (VPLE) at a site with contamination from petroleum aboveground and underground storage tanks (ASTs and USTs). This fact sheet will also aid those who are using the Petroleum Environmental Cleanup Fund Act (PECFA) to pay for part of the environmental cleanup costs at a VPLE site.

Responsible parties and others conducting cleanups should review this fact sheet carefully to understand how to obtain a VPLE Certificate of Completion at sites under Commerce jurisdiction. It is important to understand that not all costs associated with the investigation and cleanup of a VPLE site will be eligible for reimbursement from the PECFA fund. Also, it is important to understand these procedures to prevent any unnecessary delays and ensure that parties obtain the necessary approvals. Persons interested in pursuing the VPLE process who may be seeking PECFA reimbursement should contact the Department of Commerce (see Question #1) as soon as possible to understand what costs may or may not be reimbursed by PECFA.



This fact sheet includes 11 frequently asked questions about the VPLE and PECFA program. It also includes a table on page 6 that indicates the roles and responsibilities of the DNR and Commerce, and information about where technical reports for each of the different categories of sites should be sent. General information on the VPLE process can be found in the DNR's *"Fact Sheet #2: Voluntary Party Remediation and Exemption From Liability,"* (publication # RR-506).

### What is PECFA?

The Petroleum Environmental Cleanup Fund Act (PECFA) program reimburses owners who clean up soil and groundwater contaminated by discharges from petroleum storage tanks. PECFA is administered by the Department of Commerce.

### What is the VPLE?

The Voluntary Party Liability Exemption is a process by which parties can voluntarily conduct an environmental investigation and cleanup of a property and then receive limits on their future liability. The VPLE is found in section 292.15 of Wisconsin Statutes and is implemented by the Department of Natural Resources.



# Questions and Answers About The Voluntary Party Liability Exemption (VPLE) At Sites With Leaking Petroleum Storage Tanks

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## 1. Can a voluntary party ("VP") use PECFA funds to reimburse costs of cleaning up a property that is seeking the VPLE?

Yes, with limitations. If a site is eligible for PECFA funding, parties can use the fund to reimburse costs related to the PECFA-eligible activities. These activities may constitute all or part of the total environmental efforts necessary to obtain the liability exemption. However, DNR may require investigative or remedial actions necessary to obtain the liability exemption that may not be eligible for reimbursement from PECFA funding. To assure maximum PECFA eligibility, at the first point at which a party considers seeking the VPLE, the Commerce program assistant should be notified by the potential VPLE participant. Contact the program assistant in the Site Review Section by calling (608) 266-2424.

## 2. What costs are not eligible for PECFA reimbursement at a VPLE site?

Generally, PECFA will not reimburse the cost to conduct a Phase I and Phase II site assessment. If the Phase II identifies contamination on the property that is not eligible for PECFA funding, PECFA reimbursement will not be available for investigation and cleanup of that contamination. However, some Phase II costs may be reimbursed if they are necessary for the environmental investigation of the contamination that is eligible for PECFA funding. In addition, PECFA will not reimburse the cost of conducting any work (investigation, remediation, or monitoring) that is more expensive than

the least costly method of remedial action to bring the release from the PECFA-eligible tank(s) to closure. If the voluntary party conducts remedial actions in order to obtain a Certificate of Completion that are more expensive than the least costly method of remedial action, the voluntary party must pay for those additional costs from his or her own funds or utilize other funding sources. PECFA does not reimburse any of the application and oversight fees that voluntary parties are required to pay to the DNR for the Voluntary Party Liability Exemption process. Additionally, PECFA will not reimburse the cost of environmental insurance fees required by the DNR if the site is approved for closure under s. NR 726.05(2)(b), Wis. Adm. Code, using flexible closure with natural attenuation. Any questions about PECFA eligibility or reimbursement should be directed to Commerce as early in the process as possible.

## 3. Which agency issues the VPLE Certificate of Completion?

The DNR is the agency with the statutory authority to issue a VPLE Certificate of Completion to a voluntary party seeking the liability exemption in s. 292.15, Wis. Stats. This authority applies to all properties, including those under the jurisdiction of Commerce.

## 4. Can I receive a VPLE Certificate of Completion for a property that has already received a closure letter?

Yes. If a voluntary party applies for the liability exemption for a property that has already obtained a closure letter

from either DNR or Commerce, the voluntary party will be required to meet all the conditions in s. 292.15, Wis. Stats. If those requirements are met, the voluntary party can obtain a Certificate of Completion.<sup>1</sup> Typically the DNR project manager will require that a Phase I site assessment and, if necessary, a Phase II site assessment be conducted to determine whether there are any remaining areas of contamination on the property in addition to the site location(s) referenced in the closure letter.<sup>2</sup> After all areas of potential contamination have been identified and addressed, the voluntary party can submit to the DNR project manager a request for a Certificate of Completion. Commerce will not conduct a co-review.

**5. Can I receive a Certificate of Completion if my site is simply a corner gas station?**

Yes. A person can apply for the liability exemption for voluntary remediation for any property where there is contamination caused by hazardous substance discharges, including petroleum products. The investigation and cleanup requirements to obtain the liability exemption are the same for any site. The requirements for obtaining the exemption are described in s. 292.15, Wis. Stats.; ch. NR 750, Wis. Adm. Code; and in DNR's "*Fact Sheet #2: Voluntary Party Remediation and Exemption from Liability*," (publication # RR-506).

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<sup>1</sup> If a site was closed before groundwater enforcement standards were met by using natural attenuation and meets the conditions in s. 292.15, Wis. Stats., a voluntary party can obtain a Certificate of Completion if they meet the insurance requirements in NR 754, Wis. Adm. Code.

<sup>2</sup> The costs related to this additional investigation are not eligible for PECFA funding unless additional contamination from a PECFA-eligible tank systems is discovered.

**6. Where do I send my application to begin the Voluntary Party Liability Exemption process?**

Any party who wants to obtain the liability exemption must submit an application and the required fees to the Remediation and Redevelopment program staff in the DNR region where the property is located. This requirement applies even if the site is under Commerce jurisdiction. *If the site is participating in the PECFA reimbursement program, the Commerce program assistant should be notified by the VPLE applicant at the first point at which the responsible party considers seeking the VPLE (see Question 1).*

**7. Which agency will review my cleanup if I am requesting a VPLE for my site that is under Commerce jurisdiction? Where should my consultant send my technical reports?**

If a property is a low or medium risk site, as outlined in 1999 Wisconsin Act 9 and chs. NR 746 and Comm 46, Wis. Adm. Code, the site is under the jurisdiction of Commerce. Because the DNR issues the Certificate of Completion, the review of the investigation and cleanup actions will be done jointly by both Commerce and the DNR. You will be assigned a project manager from both Commerce and DNR for your site review. These two people will work together to review the cleanup actions.

Consultants should prepare two copies of all reports pertaining to the site and send one to each agency. Although Commerce will conduct the primary technical review, the DNR will also conduct a technical review to ensure that the site meets the criteria for a Certificate of Completion.

If the site is participating in the PECFA program, once Commerce issues a closure or conditional closure letter, PECFA funding is terminated, except for reasonable, eligible post-closure costs. Reasonable, eligible post-closure costs typically include submission of the final PECFA claim and monitoring well abandonment. If the DNR project manager determines that additional investigation or remediation is required for the Certificate of Completion, those costs are not eligible for PECFA reimbursement. The PECFA fund will not reimburse for the cost of the time spent on the VPLE issues.

**8. If my site is high risk, as outlined in 1999 Wisconsin Act 9 and chs. NR 746 and Comm 46, Wis. Adm. Code, and under the jurisdiction of the DNR, and I have applied for both PECFA reimbursement and the VPLE program, does Commerce get copies of the reports?**

As is the case for non-VPLE sites, for any PECFA-eligible site (including those under DNR jurisdiction) that cannot achieve closure for less than \$60,000, Commerce will receive and co-review a copy of the site investigation report for PECFA public bidding purposes. If site expenditures are anticipated to be over \$60,000 to reach closure, the owner must follow the public bid process (see Question 10). Other than the site investigation report, Commerce does not require copies of other reports for high-risk sites. The DNR will review the proposed remedial action plan to ensure the remedy chosen will achieve closure and will meet the requirements to receive a Certificate of Completion.

**9. If my site has petroleum contamination from a tank system eligible for PECFA, in addition to**

**contamination not eligible for PECFA funding (co-contamination), how do I determine how much of the investigation and cleanup costs are PECFA-eligible? Where should my consultant send my technical reports for these sites?**

If the site has petroleum contamination from a tank system eligible for PECFA funding that is co-mingled with contamination not eligible for PECFA funding, such as chlorinated compounds, the site is considered "co-contaminated," and the site is under the jurisdiction of the DNR. As always, Commerce co-reviews all issues pertaining to PECFA reimbursement. To determine what investigation and cleanup costs will be eligible for PECFA reimbursement, the party conducting the cleanup must submit a cost-separation methodology to Commerce for approval. This methodology will establish the share of the total costs that are eligible for PECFA reimbursement.

Also, as is the case for non-VPLE sites, if it will cost over \$60,000 to achieve closure, the responsible party must follow the public bid process (see Question 10) and Commerce will receive and co-review a copy of the site investigation report. However, Commerce does not require copies of other reports for co-contamination sites.

**10. If I am using PECFA to pay for part of the cost to clean up a site for which I am seeking the Voluntary Party Liability Exemption, will the site remediation be bid?**

Yes. If total costs to achieve closure for the portion of the site eligible for PECFA funding are anticipated to be greater than \$60,000, the site must proceed through the public bidding process. Also, if the site is a co-

contaminated site, the site will be entered in the public bidding process. The costs to be reimbursed by PECFA will be the share agreed upon in the approved cost separation methodology (see Question 9). Only the cleanup of the contamination eligible for PECFA funding is required to be bid; contamination not eligible for PECFA funding is not required to be included in the bid. For all bid sites, the bid process determines the maximum PECFA reimbursable cost for the least costly method of remedial action. The voluntary party may conduct remedial actions that are more expensive than the least costly method. However, PECFA will not reimburse for those costs above the least costly method of remediation. The voluntary party would have to pay the difference between the "least costly" approved method and the more expensive action. Although at this time, the voluntary party is not required to use the consultant who submits the winning bid, the voluntary party will be limited to the winning bid amount for PECFA reimbursement.

## 11. How do I find out more?

For more information on the PECFA program, please refer to the Commerce publication "*Information About PECFA - Wisconsin's Petroleum Environmental Cleanup Fund Act*," (publication # ERS-10083-P). This and other information on PECFA can be found on the Commerce web site at: [www.commerce.state.wi.us/ER/ER-PECFA-Home.html](http://www.commerce.state.wi.us/ER/ER-PECFA-Home.html).

For more information on the Voluntary Party Liability Exemption, please refer to the DNR publication "*Fact Sheet 2 – Voluntary Party Remediation and Exemption from Liability*," (publication # RR-506). Also, please refer to the statutory authorization in s. 292.15, Wis. Stats. This and other information on the VPLE can be found on the DNR web site at: [www.dnr.state.wi.us/org/aw/rr/](http://www.dnr.state.wi.us/org/aw/rr/).

### For More Information

If you have additional questions about the coordination between the DNR and Commerce for VPLE sites, please contact Michael Prager at the DNR (608-261-4927 or [pragem@dnr.state.wi.us](mailto:pragem@dnr.state.wi.us)) or Jennifer Skinner at Commerce (414-220-5373 or [jkskinner@commerce.state.wi.us](mailto:jkskinner@commerce.state.wi.us)).

Additional copies of this, or other Department of Natural Resources publications can be ordered from the DNR's Remediation and Redevelopment Program by calling the information line at 800-367-6076 (in-state long distance), or 608-264-6020 (for local or out-of-state long distance).

### Department of Natural Resources Disclaimers

This document may contain some information about certain state statutes and rules but does not necessarily include all of the details found in the statutes/rules. Readers should consult the actual language of the statutes/rules to answer specific questions.

The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240

This publication is available in alternative format upon request. Please call 608-267-3543 for more information.



## Lead Agency for Technical Review and Report Submittal Requirements for VPLE sites with Petroleum-Tank Contamination

Regardless of the type of site, the following responsibilities apply to all four categories of sites listed in the table below:

- Commerce has responsibility for all reviews regarding PECFA reimbursement.
- The DNR and/or Commerce has responsibility for technical review, depending on the site category.
- The DNR has responsibility for ensuring that all the requirements to obtain the Voluntary Party Liability Exemption have been met, including approving the Phase 1 Environmental Site Assessment, Phase 2 Environmental Site Assessment, site investigation of the entire property, and approval of the remedial action plan, as well as issuing a Certificate of Completion.

	Type of Site and Source of Contamination	Risk Classification	Agency with Primary Authority for Technical Review	Report Submittal for the VPLE Certificate
<b>1</b>	Any site	Site has not been classified yet	DNR authority until risk classification has been determined	Submit Phase 1, Phase 2, and SI to the DNR until risk classification is determined
<b>2a</b>	Petroleum contamination from a tank system; no other contamination at the site	Low or medium risk sites (see NR 746.03 (8) and (9))	Commerce authority	Both agencies
<b>2b</b>		High risk (see NR 746.03(6))	DNR authority	DNR <sup>∇</sup>
<b>3a</b>	Petroleum contamination from a tank system and other contamination (ERP <sup>*</sup> activity) at the same property	Co-contaminated site <sup>#</sup>	DNR authority	DNR and Commerce <sup>∇/♦</sup>
<b>3b</b>		Low or medium risk and also separate ERP <sup>*</sup> activity at the same property; no co-contamination	DNR and Commerce authority; petroleum contamination from a tank system is under Commerce authority and ERP <sup>*</sup> is under DNR authority	Reports for the petroleum tank site should be submitted to both agencies and the reports related to the non-petroleum ERP <sup>*</sup> site should be send only to the DNR
<b>3c</b>		High risk and also separate ERP <sup>*</sup> activity at the same property; no co-contamination	DNR authority	DNR <sup>∇</sup>
<b>4</b>	Site has been already closed.	Any classification	DNR; unless additional contamination eligible for PECFA is found.	DNR

### Notes:

<sup>∇</sup> For sites that are participating in the PECFA reimbursement program and cannot achieve closure for less than \$60,000, Commerce must receive a copy of the site investigation report and Commerce will assist with the PECFA public bid process (see Question 10 on page 4).

<sup>\*</sup> Environmental Repair Program (ERP) sites are generally any sites that have contaminated soil and/or groundwater from a discharge of a hazardous substance other than petroleum tank related contamination and are managed by the DNR.

<sup>#</sup> A co-contaminated site is one that has petroleum contamination from a tank system that is co-mingled with non-petroleum contamination, such as chlorinated compounds

<sup>♦</sup> For co-contamination sites, Commerce must approve the cost separation methodology that will be used to separate PECFA-eligible and PECFA-ineligible costs.